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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, 742, and 774

[Docket No. 141107937-4937-01]

RIN 0694–AG33

**Revision to the Export Administration Regulations: Controls on Electronic
Commodities; Exports and Reexports to Hong Kong**

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) to expand controls for national security reasons and responds to public comments solicited by a Bureau of Industry and Security (BIS) notice of inquiry regarding the proper export control classification of certain electronic commodities and a type of radar. Specifically,

in this rule, BIS amends the EAR to expand national security controls on certain electronic commodities controlled on the Commerce Control List (CCL) and to limit license exceptions for these items. This rule also expands license requirements for exports and reexports to Hong Kong of items controlled for national security reasons.

DATES: *Effective date:* This rule is effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER], except that the revision of the Related Controls paragraph under the List of Items Controlled section in ECCN 3E001, Supplement No. 1 to part 774, is effective December 30, 2014.

FOR FURTHER INFORMATION CONTACT: With respect to electronic components, contact Brian Baker, Office of National Security and Technology Transfer Controls, Electronics and Materials Division, at 202-482-5534. With respect to the U.S. government's export control policy for Hong Kong, contact Steven Schrader, Office of Nonproliferation and Treaty Compliance, Foreign Policy Division, at 202-482-1338.

SUPPLEMENTARY INFORMATION:

Background

This rule amends the Export Administration Regulations (EAR) to expand controls for national security reasons and responds to public comments solicited by a Bureau of Industry and Security (BIS) notice of inquiry regarding the proper export control

classification of certain electronic commodities and a type of radar. Specifically, in this rule, BIS amends the EAR to expand national security controls on certain electronic commodities controlled on the Commerce Control List (CCL) and to limit license exceptions for these items. This rule also expands license requirements for exports and reexports to Hong Kong of items controlled for national security reasons.

Electronic Components

Notice of Inquiry: Comment Summary and BIS Response

On July 1, 2014, BIS and the Department of State published final rules related to military electronics to take effect on December 30, 2014 (*see* 79 FR 37551 and 79 FR 37536) (herein the “BIS July 1 Military Electronics Rule” and the “Department of State July 1 Military Electronics Rule”). On the same day, BIS published a notice of inquiry (79 FR 37547) seeking additional comments on the proper export control classification of microwave monolithic integrated circuit (MMIC) power amplifiers, discrete microwave transistors, and bi-static and multi-static radar that exploits greater than 125 kHz bandwidth and is lower than 2 GHz center frequency to passively detect or track using radio frequency (RF) transmissions (*e.g.*, commercial radio or television stations).

The notice of inquiry set forth the parameters adopted by the Wassenaar Arrangement 2013 plenary meeting for including MMIC power amplifiers and discrete microwave transistors on its Dual-Use List. Those parameters are found in Export Control

Classification Number (ECCN) 3A001 paragraphs .b.2 and .b.3. The BIS July 1 Military Electronics Rule adopted additional parameters that, if met, would move the MMIC power amplifier or discrete microwave transistor from ECCN 3A001 to the “600 series” ECCN 3A611, and corresponding technology controls to 3E611. The notice sought comments on the appropriateness of the factors used to distinguish devices to be controlled under ECCN 3A611 from those controlled under ECCN 3A001.

The Department of State July 1 Military Electronics Rule placed bi-static and multi-static radar that exploits greater than 125 kHz bandwidth and is lower than 2 GHz center frequency to passively detect or track using radio frequency (RF) transmissions (*e.g.*, commercial radio or television stations) in USML Category XI(a)(3)(xxvii). The notice of inquiry sought comments on whether such radars are in fact in use in civil air traffic control, collision avoidance or weather radar in sufficient quantities to justify moving such radar to the CCL.

BIS received comments from eight parties. Six addressed MMIC power amplifiers or discrete microwave transistors or both. One commenter addressed passive radar and one commenter addressed the impact that regulations not administered by BIS have on his business.

Comments related to use of MMIC power amplifiers and / or discrete microwave transistors in civil applications and impact of 3A611 control on U.S. manufacturers

The commenters generally opined that classifications in the BIS July 1 Military Electronics Rule would increase costs and impose delays in shipping for U.S. manufacturers. The commenters cited a number of civil uses for MMIC power amplifiers and discrete microwave transistors that would be controlled in ECCN 3A611 under the BIS July 1 Military Electronics Rule to become effective on December 30, 2014. The civil uses that they cited are:

- Cellular communications applications including
 - Point to point radios
 - Cellular backhaul
 - LTE infrastructure
- WiMax
- Ground to satellite communications
 - Block up converters and solid state power amplifiers
 - Direct internet access via satellite for individual customers
 - Satellite access for WiFi aboard commercial airliners
 - Very small aperture terminals (VSAT) mainly for business data networks
- Test equipment for telecommunications networks
- Civilian radar (maritime, air traffic and weather)

Two commenters noted that civil applications are making greater use of two sets of frequency ranges than in the past. The commenters stated that cellular base stations are

expanding into the 3.5 GHz band and that block up-converters and solid state amplifiers used in satellite based civil communications are expanding into the Ka band.

Four manufacturers of MMIC power amplifiers and / or discrete microwave transistors provided a list of specific amplifiers and transistors by model number that are sold for use in commercial products and that would become controlled in ECCN 3A611 by the BIS July 1 Military Electronics Rule on December 30, 2014.

One manufacturer of commercial telecommunications equipment confirmed that it has suppliers in the United States, Japan and Singapore for some of the MMIC power amplifiers and discrete microwave transistors that would be made subject to ECCN 3A611 by the BIS July 1 Military Electronics Rule.

Exacerbates an existing disadvantage

One commenter asserted that manufacturers located outside the United States have advantages over their U.S. counterparts even without the latter's being subjected to the 3A611 classification because the European Union has not revised its control lists to implement any Wassenaar Arrangement approved changes for three years. The expansion of MMIC power amplifier and discrete microwave transistor coverage adopted by the Wassenaar Arrangement December 2013 plenary meeting may not be implemented by the EU for months or years. (On August 4, 2014, the EAR was amended

to include the expanded MMIC power amplifier and discrete microwave transistor coverage adopted by the December 2013 plenary meeting. *See* 79 FR 45287).

This commenter further asserted that manufacturers located outside the United States also have an advantage because other countries make decisions on license applications more quickly than the United States.

Increases the number of licenses required

One manufacturer estimated that ECCN 3A611 would impose license requirements on exports that currently do not require a license for 39 products that it has been selling to commercial customers, in some cases for more than a decade. The customers for these products are largely global telecommunications equipment manufacturers. The manufacturer noted that manufacturers in other countries can supply MMIC power amplifiers and discrete microwave transistors that would meet the parameters of 3A611 but that are not subject to the EAR. This manufacturer stated that the license requirements of 3A611 would “stop exports of these 39 products hindering its participation in three of our core commercial markets: point to-point radio, satellite ground terminal (also called VSAT, for Very Small Aperture Terminal), and cellular base stations above 2.7 GHz.” Because its customers for two of these products, point-to-point radio and the emerging 3.5 GHz cellular infrastructure (base stations), are largely outside the United States, this manufacturer stated that without ability to export it “would likely

terminate current investments” to develop MMIC power amplifiers and discrete microwave transistors for such products.

Another manufacturer reported that about 75% of its MMIC products that can currently be exported without a license would require a license to all destinations other than Canada under ECCN 3A611. It has obtained seven export licenses for these products in 18 months. With the new requirements, it estimates that it would need about 71 export licenses. Also, there will be a strong "presumption of denial" for all export license applications for exports of MMICs to China (PRC) – a factor that would make it impossible to use U.S. origin MMIC power amplifiers and discrete microwave transistors for telecommunications equipment made in China.

One telecommunications equipment manufacturer pointed out that its products, if made outside the United States, but incorporating even one U.S. origin 3A611 commodity, may not be exported to China because of the zero *de minimis* threshold and license application denial policy for 600 series items that apply to that country. The same piece of equipment manufactured outside the United States, if made with MMIC power amplifiers or discrete microwave transistors that also were made outside the United States, would not be subject to those restrictions. This same manufacturer also noted that if the same piece of equipment were manufactured in the United States, it would be classified under the ECCN that controls the piece of equipment even if that piece of equipment contained 600 series commodities. BIS notes that although a foreign made item containing a 600 series MMIC power amplifier or discrete microwave transistor

would be subject to the EAR if being exported to China, its ECCN (and thus CCL based license requirements) would be based on the ECCN of the commodity, not that of its incorporated parts or components.

Criteria for distinguishing civil from military MMIC power amplifiers and discrete microwave transistors

Several commenters stated that power added efficiency (PAE) is not an appropriate criterion for identifying which MMIC power amplifiers and discrete microwave transistors are predominately used in military applications. In the words of one commenter: “Employing PAE for distinguishing military from civil products seems based on an implicit assumption that military systems uniformly require higher efficiency than commercial operations. That assumption is not true.” The commenters offered the following reasons for asserting that power added efficiency is not an appropriate metric for distinguishing military from civil MMIC power amplifiers and discrete microwave transistors.

- The PAE thresholds in ECCN 3A611 are too low. They would cover most Gallium Nitride (GaN) MMICs and transistors.
- PAE is not a precise measure. PAE of a single product can vary widely depending on a number of factors at the time of testing: bias condition, RF drive level, temperature, pulse width, duty cycle, and time period of operation.

- In industry practice, there is no standard consistent way to measure PAE. It can be measured at the optimal output load, at a single point of frequency, at a peak power level, or at an average point of normal operation.
- Many products are not rated for PAE because they will be used in applications where other measures make more sense. For example, in communications, a more relevant measure is saturated peak power (which needs to be very high to achieve the average level of operation that the customer needs).
- The PAE metric creates the same problems as “average output power” that was removed from ECCN 3A001 in accordance with the Wassenaar Arrangement 2013 plenary meeting changes to the Wassenaar Dual-Use List. It is not a metric that lends itself to clear or consistent definition in the RF industry, and as such should not be the basis for regulating RF products.
- Producers of commercial systems are demanding ever-higher efficiency to reduce system power consumption (which reduces operating costs), size, and weight.
- For power-intensive applications such as cellular base stations, equipment manufacturers goals typically exceed present capabilities of MMIC power amplifier and discrete microwave transistor technology and power amplifier topology.
- For the device, efficiency is determined by the device technology and frequency of operation. For the amplifier that uses the device, efficiency is determined by the topology and class of operation, load tuning, and bandwidth.

One commenter noted that a major base station manufacturer is asking for GaN drain efficiency at saturated output power to be greater than 70%.

Comments and Responses

Commenters offered several possible changes to the criteria for including MMIC power amplifiers or discrete microwave transistors in ECCN 3A611. BIS and the Departments of Defense and State reviewed the public comments and reassessed the appropriate level of control over those devices.

Comment 1: Two commenters recommended eliminating the power added efficiency values with respect to MMIC power amplifiers and increasing the threshold values for peak saturated power output in all frequency ranges to values that would be substantially higher than those specified in the BIS July 1 Military Electronics Rule. Another commenter recommended increasing the threshold values for fractional bandwidth, peak saturated power output and power added efficiency in all frequency ranges to values that would be substantially higher than the values in the BIS July 1 Military Electronics Rule. Two commenters recommended increasing the fractional bandwidth threshold values for all or some of the frequency ranges to levels that that would be substantially higher than those specified in the BIS July 1 Military Electronics Rule, but did not recommend changes to the other parameters.

Response 1: BIS did not adopt changes to the control based on fractional bandwidth, peak saturated power output, and/or power added efficiency because the agency found that attempting to designate some MMIC power amplifiers and discrete microwave transistors as civil and others as military based on those characteristics is impractical, and any resulting classification would not accurately reflect real world applications for those devices. Accordingly, this rule does not adopt any performance parameters for distinguishing military MMIC power amplifiers and discrete microwave transistors from their civil counterparts.

Nevertheless, MMIC power amplifiers and discrete microwave transistors, regardless of whether they meet the performance levels of ECCN 3A001 or the published, but not yet effective ECCN 3A611, are able to enhance the performance of certain military electronic systems in ways that can confer a military advantage and thus, the U.S. government needs to review not only proposed exports and reexports for use in military applications, but also those that are for use in applications that pose significant risk of diversion to a military application or enhancement of a potential adversary's military capability. After consultation with the Departments of Defense and State, BIS has concluded that export and reexport of MMIC power amplifiers and discrete microwave transistors for civil telecommunication end uses do not impose such risks to an extent that would justify license requirements beyond those currently imposed on MMIC power amplifiers and discrete microwave transistors by ECCN 3A001. However, for other end uses, the risks involved necessitate prior U.S. Government review of transactions to guard against possible diversion to a military application or enhancement of a potential

adversary's military capability. Accordingly, BIS has decided to require licenses for the export and reexport of all MMIC power amplifiers and discrete microwave transistors currently on the CCL for civil telecommunications uses to the same extent as license are required for exports and reexports of MMIC power transistors and discrete microwave transistors currently controlled in ECCN 3A001. For all other uses, BIS will impose a license requirement for all destinations other than Canada and will eliminate eligibility for most license exceptions.

Comment 2: One commenter recommended adding the phrase “specially designed for a military application,” which appears in ECCN 3A611.a, to paragraphs .b and .c of that ECCN (which control MMIC power amplifiers and discrete microwave transistors, respectively) as well.

Response 2: BIS also considered adding the phrase “specially designed for a military application,” which appears in ECCN 3A611.a, to paragraphs .b and .c of that ECCN as suggested by one commenter. Although the idea has merit, its application would not trigger a license requirement for all transactions into which the U.S. Government needs visibility to determine whether the transaction negatively affects United States security interests. Upon review, the agencies concluded that the manufacture and distribution of devices that support civil telecommunications networks and systems pose a very low risk. However, incorporation into military hardware is not the only activity into which the U.S.

Government needs visibility. Some civil uses may also have heightened potential for diversion to military application.

Comment 3: Two commenters recommended adding a de-control note to ECCN 3A611 excluding products specifically designed for radio communications in a frequency band allocated by the ITU.

Response 3: BIS considered and decided not to adopt the proposal to exclude products specifically designed for radio communications in a frequency band allocated by the ITU. Frequency bands allocated by ITU may overlap the frequencies used by military devices.

Comments regarding bi-static / multistatic passive radar that exploits greater than 125 kHz bandwidth is lower than 2 GHz center frequency to passively detect or track using radio frequency (RF) transmissions (e.g., commercial radio or television stations)

One commenter stated that it has an internal development project to evaluate the feasibility of applying bi-static radar to civil air traffic management applications. The bi-static radar approach could be used as an airborne collision avoidance system for civil unmanned aerial vehicles and could apply to general aviation aircraft. The radar described in the USML Category XI(a)(3)(xxvii) control could be installed at ground based locations to provide air traffic information about aircraft not equipped with transponders to aircraft operating around uncontrolled airports.

In the past, this commenter has classified its passive radar efforts under ECCN 5A001.g and the related technology under ECCN 5E001. Pursuant to the Department of State July 1 Military Electronics Rule, it will now have to classify the system under USML Category XI(a)(3)(xxvii). The commenter cited an on-going study to test the feasibility of using passive radar that relies on radio and television broadcast signals for air traffic control being conducted in the United Kingdom (UK) under the auspices of the United Kingdom Technology Strategy Board. The commenter stated that it did not know how this technology is classified in the United Kingdom, but indicated that if the UK does not classify it as a munition, the U.S. company could face an un-level playing field.

BIS has decided not to recommend to the Department of State that the revised USML Category XI scheduled to take effect on December 30 be further revised as a result of this comment. As described by the commenter, the technology is not ready for commercial application and thus need not be removed from the USML and added to the CCL.

Comment unrelated to regulations administered by BIS

One commenter commented on the effect that rules governing the operation of unmanned aerial vehicles in the United States had on his business.

The operation of unmanned aerial vehicles in the United States is outside the scope of regulations administered by BIS. Therefore, BIS is taking no action in response to this comment.

Specific changes related to ECCN 3A001 made by this Final Rule

For the reasons discussed above, this rule imposes a national security (NS column 1) control on certain MMIC power amplifiers and certain discrete microwave transistors, except those that are being exported or reexported for use in civil telecommunications applications, because the U.S. Government has determined that these commodities are at an increased risk of diversion to military applications or to activities that would enhance the military capabilities of potential adversaries, end users and end uses contrary to national security objectives. This rule also limits the availability of License Exceptions Limited Value Shipments (LVS), Shipments to Group B Countries (GBS), Additional Permissive Reexports (APR), and Strategic Trade Authorization (STA) for those commodities, and makes parallel changes to the technology related to these commodities for the same reason.

Specifically, this rule revises the controls paragraph in ECCN 3A001 to add a national security (NS column 1) control and a regional stability (RS column 1) control to these commodities, which prior to publication of this rule were controlled under NS column 2. (The anti-terrorism (AT column 1) control remains unchanged by this rule.) This rule revises the List Based License Exceptions paragraph in ECCN 3A001 to remove LVS and GBS eligibility, and to exclude these commodities from License Exception STA eligibility under the Special Conditions for STA paragraph. This rule also revises

eligibility paragraphs in License Exceptions APR (§ 740.16(a) and (b)) and STA (§ 740.20(b)(2)) to exclude these commodities.

Technology for the development and production of these commodities is controlled by ECCN 3E001. This rule revises the List Based License Exceptions paragraph in ECCN 3E001 to remove eligibility for License Exception Technology and Software Under Restriction (TSR), and to exclude technology for these commodities from License Exception STA eligibility under the Special Conditions for STA paragraph. This rule does not remove license exception eligibility for technology controlled by ECCN 5E001.d. The fact that an item, such as a MMIC, is used for telecommunications does not make that item a telecommunications item controlled in Category 5 of the CCL. There are additional special design modifications, frequency band limiters, and interfaces that are specific for telecommunications and that constitute the required technology controlled in 5E001.d MMIC power amplifiers for telecommunications. The design technology for the MMIC is controlled by ECCN 3E001. The additional technology required for telecommunications is controlled by ECCN 5E001. This rule adds notes to the Related Controls paragraphs in both ECCNs 3E001 and 5E001 to clarify the classifications of these technologies.

These actions will allow the U.S. Government to examine in advance the exports and reexports of MMIC power amplifiers and discrete microwave transistors that pose the greatest risk of diversion or enhancement of potential adversaries' military capabilities without imposing unnecessary licensing requirements on low risk transactions.

Consistent with past practice, this rule provides a saving clause for items already en route to proceed and allows sufficient time to obtain a “deemed” export license for technology transfer to a foreign national employed in the United States (see “Saving Clause” below).

BIS intends to publish, in a future rulemaking, a corrections notice removing paragraphs .c and .d from ECCN 3A611 and paragraphs b.3 and b.4 from 3E611 as published in the BIS July 1 Military Electronics Rule.

Exports and Reexports to Hong Kong

Notwithstanding Hong Kong’s comprehensive export control system, analysis of trade information indicates Wassenaar Arrangement controlled items exported from the United States to Hong Kong or reexported from abroad to Hong Kong are imported into Hong Kong and reexported from Hong Kong contrary to the requirements of Hong Kong’s export control system (which requires import and export authorization from the Hong Kong Government) and the EAR.

Prior to publication of this rule, certain national security-controlled items (i.e., controlled for NS column 2 on the CCL) did not have a destination-based license requirement for Hong Kong. This rule imposes such a requirement by placing an “X” in the box in the entry in the Commerce Country Chart for Hong Kong for NS column 2, and by removing text in §742.4 (national security) that excepted Hong Kong from NS column 2 license requirements. A corresponding import license will be required from the Hong Kong

government for these items, and this action will facilitate Hong Kong's ability to track their shipment and prevent diversion of these items. This rule is imposing this new license requirement to support the objectives of both the U.S. Government and the Hong Kong Government to prevent diversion of sensitive items. This rule also aligns the treatment of Hong Kong under the EAR with other Wassenaar Arrangement members' treatment of Hong Kong for items under Wassenaar controls.

Saving Clause

Shipments of items removed from eligibility for export or reexport under a license exception or without a license (i.e., under the designator "NLR") as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported or reexported before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION]. Any such items not actually exported or reexported before midnight, on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION], require a license in accordance with this regulation.

"Deemed" exports of "technology" and "source code" removed from eligibility for export under a license exception or without a license (under the designator "NLR") as a

result of this regulatory action may continue to be made under the previously available license exception or without a license (NLR) before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION]. Beginning at midnight on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION], such “technology” and “source code” may no longer be released, without a license, to a foreign national subject to the “deemed” export controls in the EAR when a license would be required to the home country of the foreign national in accordance with this regulation.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not a significant rule for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission.

Total burden hours associated with the PRA and OMB control number 0694–0088 are expected to increase by approximately 22 hours as a result of this rule (an estimated thirty additional license per year). You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Office of Management and Budget (OMB) by e-mail to OIRA_Submission@omb.eop.gov, or by fax to (202) 395-7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)).

BIS is implementing this rule to protect U.S. national security or foreign policy interests. This rule imposes an export and reexport license requirement on certain items controlled for national security reasons destined to Hong Kong. This rule is imposing this new license requirement to support the objectives of both the U.S. Government and the Hong Kong Government to prevent diversion of sensitive items. This rule also removes certain license exception availability for some electronic components, such as MMIC power amplifiers and certain discrete microwave transistors, except those that are being exported or reexported for use in civil telecommunications applications, that BIS has determined are at risk for diversion or enhancement of potential adversaries' military capabilities. By requiring a license for end uses where that possibility of diversion or enhancement of potential adversaries' military capabilities is higher, the U.S. Government has the opportunity to evaluate the risk in advance of export or reexport. Immediate implementation will allow BIS to prevent exports of these items to users and for uses that pose a security threat to the United States or its allies. If BIS published a proposed rule soliciting notice and comment, the resulting delay in implementation would

afford an opportunity to divert these items to users and uses that pose such a security threat, thereby undermining the purpose of the rule.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects

15 CFR Part 738

Exports.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 738, 740, 742, and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 738—[AMENDED]

1. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 et seq.; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

Supplement No. 1 to part 738 [Amended]

2. Supplement No. 1 to part 738 is amended by revising the entry for Hong Kong to read as follows:

Supplement No. 1 to Part 738 –Commerce Country Chart

[Reason for control]

Countries	Chemical & biological weapons			Nuclear nonproliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
	*			*		*		*			*				*	
Hong Kong	X	X		X		X	X	X	X	X		X		X		
	*			*		*		*			*				*	

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PART 740—[AMENDED]

3. The authority citation for 15 CFR part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 7201 et seq.; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

4. Section 740.16 is amended by revising paragraphs (a)(2) and (b)(1) to read as follows:

§ 740.16 Additional permissive reexports (APR).

* * * * *

(a) * * *

(2) The commodities being reexported are not controlled for NP, CB, MT, SI or CC reasons and are not military commodities described in ECCN 0A919 or cameras described in ECCN 6A003.b.3 (having the characteristics listed in 6A002.a.2.a or a.2.b), 6A003.b.4.b, 6A003.b.4.c, or commodities described in 3A001.b.2 or b.3 (except those that are being reexported for use in civil telecommunications applications), 6A002.a.2.a, a.2.b, a.2.c, a.3.b.2.b, or a.3.g; and

* * * * *

(b) * * *

(1) Commodities that are not controlled for nuclear nonproliferation or missile technology reasons, described in 3A001.b.2 or b.3 (except those that are being reexported for use in civil telecommunications applications), nor listed in paragraph (b)(2) or (b)(3) of this section may be reexported to and among Country Group A:1 and cooperating countries, provided that eligible commodities are for use or consumption within a Country Group A:1 (see Supplement No. 1 to part 740) or cooperating country, or for reexport from such country in accordance with other provisions of the EAR.

* * * * *

5. Section 740.20 is amended by adding paragraph (b)(2)(xi) to read as follows:

§ 740.20 License exception strategic trade authorization (STA).

* * * * *

(b) * * *

(2) * * *

(xi) License Exception STA may not be used for any commodity controlled by ECCN 3A001.b.2 or b.3 (except those that are being exported or reexported for use in civil telecommunications applications), or any “technology” controlled by 3E001 for the “production” or “development” of commodities controlled by 3A001.b.2 or b.3.

* * * * *

PART 742—[AMENDED]

6. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014).

7. Section 742.4 is amended by revising the third sentence of paragraph (a) to read as follows:

§ 742.4 National security.

(a) *License requirements.* * * * A license is required to all destinations except Country Group A:5 (not including Argentina) (see Supplement No. 1 to part 740) and Mexico, for all items in ECCNs on the CCL that include NS column 2 in the Commerce Country Chart column of the “License Requirements” section except those cameras in ECCN 6A003.b.4.b that have a focal plane array with 111,000 or fewer elements and a frame rate of 60 Hz or less. * * *

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PART 774—[AMENDED]

8. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 et seq.; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3A001 is amended by revising the Reasons for Control and the Control Table in the License Requirements section and the List Based License Exceptions section, and adding a Special Conditions for STA section before the List of Items Controlled section to read as follows:

Supplement No. 1 to Part 774 – the Commerce Control List

* * * * *

3A001 Electronic components and “specially designed” “components” therefor, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, MT, NP, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to Microwave “Monolithic Integrated Circuits” (MMIC) power amplifiers in 3A001.b.2 and discrete	NS Column 1

microwave transistors in 3A001.b.3, except those 3A001.b.2 and b.3 items being exported or reexported for use in civil telecommunications applications	
NS applies to entire entry	NS Column 2
RS applies to Microwave “Monolithic Integrated Circuits” (MMIC) power amplifiers in 3A001.b.2 and discrete microwave transistors in 3A001.b.3, except those 3A001.b.2 and b.3 items being exported or reexported for use in civil telecommunications applications	RS Column 1
MT applies to 3A001.a.1.a when usable in “missiles”; and to 3A001.a.5.a when “designed or modified” for military use, hermetically sealed and rated for operation in the temperature range from below -54°C to above +125°C	MT Column 1
NP applies to pulse discharge capacitors in 3A001.e.2 and superconducting solenoidal electromagnets in 3A001.e.3 that meet or exceed the technical parameters in 3A201.a	NP Column 1

and 3A201.b, respectively	
AT applies to entire entry	AT Column 1

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A for MT or NP; N/A for Microwave “Monolithic Integrated Circuits” (MMIC) power amplifiers in 3A001.b.2 and discrete microwave transistors in 3A001.b.3, except those that are being exported or reexported for use in civil telecommunications applications

Yes for:

\$1500: 3A001.c

\$3000: 3A001.b.1, b.2 (exported or reexported for use in civil telecommunications applications), b.3 (exported or reexported for use in civil telecommunications applications), b.9, .d, .e, .f, and .g

\$5000: 3A001.a (except a.1.a and a.5.a when controlled for MT), and .b.4 to b.7

GBS: Yes for 3A001.a.1.b, a.2 to a.13 (except .a.5.a when controlled for MT), b.2 (exported or reexported for use in civil telecommunications applications), b.8 (except for TWTAs exceeding 18 GHz), b.9., b.10, .g, and .h.

CIV: Yes for 3A001.a.3, a.7, and a.11.

Special Conditions for STA

STA: License Exception STA may not be used to ship any item in 3A001.b.2 or b.3, except those that are being exported or reexported for use in civil telecommunications applications, to any of the destinations listed in Country Group A:5 or A:6 (See Supplement No.1 to part 740 of the EAR).

* * * * *

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3E001 is amended by revising the List Based License Exceptions section, the Special Conditions for STA, and the Related Controls paragraph under the List of Items Controlled section to read as follows:

3E001 “Technology” according to the General Technology Note for the “development” or “production” of equipment or materials controlled by 3A (except 3A292, 3A980, 3A981, 3A991 3A992, or 3A999), 3B (except 3B991 or 3B992) or 3C (except 3C992).

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

CIV: N/A

TSR: Yes, except N/A for MT, and “technology” for the “development” or

“production” of: (a) Traveling Wave Tube Amplifiers described in [3A001.b.8](#), having operating frequencies exceeding 19 GHz; (b) solar cells, coverglass-interconnect-cells or covered-interconnect-cells (CIC) “assemblies,” solar arrays and/or solar panels described in [3A001.e.4](#); (c) Microwave “Monolithic Integrated Circuits” (MMIC) power amplifiers in 3A001.b.2; and (d) discrete microwave transistors in 3A001.b.3.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit “technology” according to the General Technology Note for the “development” or “production” of equipment specified by ECCNs 3A002.g.1 or 3B001.a.2 to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR). License Exception STA may not be used to ship or transmit “technology” according to the General Technology Note for the “development” or “production” of components specified by ECCN 3A001.b.2 or b.3 to any of the destinations listed in Country Group A:5 or A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

Related Controls: (1) “Technology” according to the General Technology Note for the “development” or “production” of certain “space-qualified” atomic frequency standards described in Category XV(e)(9), MMICs described in Category XV(e)(14), and oscillators described in Category XV(e)(15) of the USML are “subject to the ITAR” (see

22 CFR parts 120 through 130). See also 3E101, 3E201 and 9E515. (2) “Technology” for “development” or “production” of Microwave “Monolithic Integrated Circuits” (MMIC) power amplifiers in 3A001.b.2 is controlled in this ECCN 3E001; 5E001.d refers only to that additional “technology” “required” for telecommunications.

* * * * *

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5, ECCN 5E001 is amended by revising the Related Controls paragraph under the List of Items Controlled section to read as follows:

5E001 “Technology” as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: (1) See also 5E101, 5E980 and 5E991. (2) “Technology” for “development” or “production” of Microwave “Monolithic Integrated Circuits” (MMIC) power amplifiers that meet the control criteria given at 3A001.b.2 is controlled in 3E001; 5E001.d refers only to that additional “technology” “required” for telecommunications.

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Dated: December 12, 2014.

Kevin J. Wolf,
Assistant Secretary for Export Administration.

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